

Environmental Protection Agency

§97.511

(18) The NO_x ozone season variability limit for Oklahoma is 4,766 tons.

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(22) The NO_x ozone season variability limit for Texas is 13,768 tons.

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§97.511 Timing requirements for TR NO_x Ozone Season allowance allocations.

(a) *Existing units.* (1) TR NO_x Ozone Season allowances are allocated, for the control periods in 2012 and each year thereafter, as provided in a notice of data availability issued by the Administrator. Providing an allocation to a unit in such notice does not constitute a determination that the unit is a TR NO_x Ozone Season unit, and not providing an allocation to a unit in such notice does not constitute a determination that the unit is not a TR NO_x Ozone Season unit.

(2) Notwithstanding paragraph (a)(1) of this section, if a unit provided an allocation in the notice of data availability issued under paragraph (a)(1) of this section does not operate, starting after 2011, during the control period in two consecutive years, such unit will not be allocated the TR NO_x Ozone Season allowances provided in such notice for the unit for the control periods in the fifth year after the first such year and in each year after that fifth year. All TR NO_x Ozone Season allowances that would otherwise have been allocated to such unit will be allocated to the new unit set-aside for the State where such unit is located and for the respective years involved. If such unit resumes operation, the Administrator will allocate TR NO_x Ozone Season allowances to the unit in accordance with paragraph (b) of this section.

(b) *New units.*—(1) New unit set-asides. (i) By June 1, 2012 and June 1 of each year thereafter, the Administrator will calculate the TR NO_x Ozone Season allowance allocation to each TR NO_x Ozone Season unit in a State, in accordance with §97.512(a)(2) through (7) and (12), for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data

availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the TR NO_x Ozone Season units) are in accordance with §97.512(a)(2) through (7) and (12) and §§97.506(b)(2) and 97.530 through 97.535.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(1)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(i) of this section, the Administrator will promulgate a notice of data availability of any adjustments that the Administrator determines to be necessary with regard to allocations under §97.512(a)(2) through (7) and (12) and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(ii)(A) of this section.

(iii) If the new unit set-aside for such control period contains any TR NO_x Ozone Season allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(1)(ii) of this section, the Administrator will promulgate, by September 15 immediately after such notice, a notice of data availability that identifies any TR NO_x Ozone Season units that commenced commercial operation during the period starting May 1 of the year before the year of such control period and ending August 31 of year of such control period.

(iv) For each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of TR NO_x Ozone Season units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(1)(iii) of this section and shall be limited to addressing whether the identification of TR NO_x Ozone Season units in such notice is in accordance with paragraph (b)(1)(iii) of this section.

(B) The Administrator will adjust the identification of TR NO_x Ozone Season units in the each notice of data availability required in paragraph (b)(1)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(1)(iii) of this section and will calculate the TR NO_x Ozone Season allowance allocation to each TR NO_x Ozone Season unit in accordance with § 97.512(a)(9), (10), and (12) and §§ 97.506(b)(2) and 97.530 through 97.535. By November 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(1)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of TR NO_x Ozone Season units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(1)(iv)(A) of this section, and the results of such calculations.

(v) To the extent any TR NO_x Ozone Season allowances are added to the new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(1)(iv) of this section, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such TR NO_x Ozone Season allowances in accordance with § 97.512(a)(10).

(2) Indian country new unit set-asides. (i) By June 1, 2012 and June 1 of each year thereafter, the Administrator will calculate the TR NO_x Ozone Season allowance allocation to each TR NO_x Ozone Season unit in Indian country within the borders of a State, in accordance with § 97.512(b)(2) through (7) and (12), for the control period in the year of the applicable calculation deadline under this paragraph and will promulgate a notice of data availability of the results of the calculations.

(ii) For each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will provide an opportunity for submission of objections to the calculations referenced in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of data availability required in paragraph (b)(2)(i) of this section and shall be limited to addressing whether the calculations (including the identification of the TR NO_x Ozone Season units) are in accordance with § 97.512(b)(2) through (7) and (12) and §§ 97.506(b)(2) and 97.530 through 97.535.

(B) The Administrator will adjust the calculations to the extent necessary to ensure that they are in accordance with the provisions referenced in paragraph (b)(2)(ii)(A) of this section. By August 1 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(i) of this section, the Administrator will promulgate a notice of data availability of any adjustments that the Administrator determines to be necessary with regard to allocations under § 97.512(b)(2) through (7) and (12) and the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(ii)(A) of this section.

(iii) If the Indian country new unit set-aside for such control period contains any TR NO_x Ozone Season allowances that have not been allocated in the applicable notice of data availability required in paragraph (b)(2)(ii) of this section, the Administrator will promulgate, by September 15 immediately after such notice, a notice of data availability that identifies any TR NO_x Ozone Season units that commenced commercial operation during the period starting May 1 of the year before the year of such control period and ending August 31 of year of such control period.

(iv) For each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will provide an opportunity for submission of objections to the identification of TR NO_x Ozone Season units in such notice.

(A) Objections shall be submitted by the deadline specified in each notice of

data availability required in paragraph (b)(2)(iii) of this section and shall be limited to addressing whether the identification of TR NO_x Ozone Season units in such notice is in accordance with paragraph (b)(2)(iii) of this section.

(B) The Administrator will adjust the identification of TR NO_x Ozone Season units in the each notice of data availability required in paragraph (b)(2)(iii) of this section to the extent necessary to ensure that it is in accordance with paragraph (b)(2)(iii) of this section and will calculate the TR NO_x Ozone Season allowance allocation to each TR NO_x Ozone Season unit in accordance with §97.512(b)(9), (10), and (12) and §§97.506(b)(2) and 97.530 through 97.535. By November 15 immediately after the promulgation of each notice of data availability required in paragraph (b)(2)(iii) of this section, the Administrator will promulgate a notice of data availability of any adjustments of the identification of TR NO_x Ozone Season units that the Administrator determines to be necessary, the reasons for accepting or rejecting any objections submitted in accordance with paragraph (b)(2)(iv)(A) of this section, and the results of such calculations. (v) To the extent any TR NO_x Ozone Season allowances are added to the Indian country new unit set-aside after promulgation of each notice of data availability required in paragraph (b)(2)(iv) of this section, the Administrator will promulgate additional notices of data availability, as deemed appropriate, of the allocation of such TR NO_x Ozone Season allowances in accordance with §97.512(b)(10).

(c) *Units incorrectly allocated TR NO_x Ozone Season allowances.* (1) For each control period in 2012 and thereafter, if the Administrator determines that TR NO_x Ozone Season allowances were allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under §52.38(b)(3), (4), or (5) of this chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(i) of this section or were allocated under §97.512(a)(2) through (7), (9), and (12) and (b)(2) through (7), (9), and (12), or under a provision of a SIP revision approved under §52.38(b)(4) or (5) of this

chapter, where such control period and the recipient are covered by the provisions of paragraph (c)(1)(ii) of this section, then the Administrator will notify the designated representative of the recipient and will act in accordance with the procedures set forth in paragraphs (c)(2) through (5) of this section:

(i)(A) The recipient is not actually a TR NO_x Ozone Season unit under §97.504 as of May 1, 2012 and is allocated TR NO_x Ozone Season allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under §52.38(b)(3), (4), or (5) of this chapter, the recipient is not actually a TR NO_x Ozone Season unit as of May 1, 2012 and is allocated TR NO_x Ozone Season allowances for such control period that the SIP revision provides should be allocated only to recipients that are TR NO_x Ozone Season units as of May 1, 2012; or

(B) The recipient is not located as of May 1 of the control period in the State from whose NO_x Ozone Season trading budget the TR NO_x Ozone Season allowances allocated under paragraph (a) of this section, or under a provision of a SIP revision approved under §52.38(b)(3), (4), or (5) of this chapter, were allocated for such control period.

(ii) The recipient is not actually a TR NO_x Ozone Season unit under §97.504 as of May 1 of such control period and is allocated TR NO_x Ozone Season allowances for such control period or, in the case of an allocation under a provision of a SIP revision approved under §52.38(b)(3), (4), or (5) of this chapter, the recipient is not actually a TR NO_x Ozone Season unit as of January 1 of such control period and is allocated TR NO_x Ozone Season allowances for such control period that the SIP revision provides should be allocated only to recipients that are TR NO_x Ozone Season units as of May 1 of such control period.

(2) Except as provided in paragraph (c)(3) or (4) of this section, the Administrator will not record such TR NO_x Ozone Season allowances under §97.521.

(3) If the Administrator already recorded such TR NO_x Ozone Season allowances under §97.521 and if the Administrator makes the determination under paragraph (c)(1) of this section before making deductions for the source that includes such recipient under §97.524(b) for such control period, then the Administrator will deduct from the account in which such TR NO_x Ozone Season allowances were recorded an amount of TR NO_x Ozone Season allowances allocated for the same or a prior control period equal to the amount of such already recorded TR NO_x Ozone Season allowances. The authorized account representative shall ensure that there are sufficient TR NO_x Ozone Season allowances in such account for completion of the deduction.

(4) If the Administrator already recorded such TR NO_x Ozone Season allowances under §97.521 and if the Administrator makes the determination under paragraph (c)(1) of this section after making deductions for the source that includes such recipient under §97.524(b) for such control period, then the Administrator will not make any deduction to take account of such already recorded TR NO_x Ozone Season allowances.

(5)(i) With regard to the TR NO_x Ozone Season allowances that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(i) of this section, the Administrator will:

(A) Transfer such TR NO_x Ozone Season allowances to the new unit set-aside for such control period for the State from whose NO_x Ozone Season trading budget the TR NO_x Ozone Season allowances were allocated; or

(B) If the State has a SIP revision approved under §52.38(b)(4) or (5) covering such control period, include such TR NO_x Annual allowances in the portion of the State NO_x Ozone Season trading budget that may be allocated for such control period in accordance with such SIP revision.

(ii) With regard to the TR NO_x Ozone Season allowances that were not allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are de-

ducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this paragraph, the Administrator will:

(A) Transfer such TR NO_x Ozone Season allowances to the new unit set-aside for such control period; or

(B) If the State has a SIP revision approved under §52.38(b)(4) or (5) covering such control period, include such TR NO_x Ozone Season allowances in the portion of the State NO_x Ozone Season trading budget that may be allocated for such control period in accordance with such SIP revision.

(iii) With regard to the TR NO_x Ozone Season allowances that were allocated from the Indian country new unit set-aside for such control period and that are not recorded, or that are deducted as an incorrect allocation, in accordance with paragraphs (c)(2) and (3) of this section for a recipient under paragraph (c)(1)(ii) of this paragraph, the Administrator will transfer such TR NO_x Ozone Season allowances to the Indian country new unit set-aside for such control period.

§97.512 TR NO_x Ozone Season allowance allocations to new units.

(a) For each control period in 2012 and thereafter and for the TR NO_x Ozone Season units in each State, the Administrator will allocate TR NO_x Ozone Season allowances to the TR NO_x Ozone Season units as follows:

(1) The TR NO_x Ozone Season allowances will be allocated to the following TR NO_x Ozone Season units, except as provided in paragraph (a)(10) of this section:

(i) TR NO_x Ozone Season units that are not allocated an amount of TR NO_x Ozone Season allowances in the notice of data availability issued under §97.511(a)(1);

(ii) TR NO_x Ozone Season units whose allocation of an amount of TR NO_x Ozone Season allowances for such control period in the notice of data availability issued under §97.511(a)(1) is covered by §97.511(c)(2) or (3);

(iii) TR NO_x Ozone Season units that are allocated an amount of TR NO_x Ozone Season allowances for such control period in the notice of data availability issued under §97.511(a)(1), which